



House of Representatives

File No. 816

General Assembly

January Session, 2011

(Reprint of File No. 280)

House Bill No. 6474
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
May 19, 2011

AN ACT CONCERNING THE RESOLUTION OF LIENS IN WORKERS' COMPENSATION CASES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 31-293 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July*
3 *1, 2011*):

4 (a) When any injury for which compensation is payable under the
5 provisions of this chapter has been sustained under circumstances
6 creating in a person other than an employer who has complied with
7 the requirements of subsection (b) of section 31-284, a legal liability to
8 pay damages for the injury, the injured employee may claim
9 compensation under the provisions of this chapter, but the payment or
10 award of compensation shall not affect the claim or right of action of
11 the injured employee against such person, but the injured employee
12 may proceed at law against such person to recover damages for the
13 injury; and any employer or the custodian of the Second Injury Fund,
14 having paid, or having become obligated to pay, compensation under
15 the provisions of this chapter may bring an action against such person

16 to recover any amount that he has paid or has become obligated to pay
17 as compensation to the injured employee. If the employee, the
18 employer or the custodian of the Second Injury Fund brings an action
19 against such person, he shall immediately notify the others, in writing,
20 by personal presentation or by registered or certified mail, of the action
21 and of the name of the court to which the writ is returnable, and the
22 others may join as parties plaintiff in the action within thirty days after
23 such notification, and, if the others fail to join as parties plaintiff, their
24 right of action against such person shall abate unless the employer,
25 insurance carrier or Second Injury Fund gives written notice of a lien in
26 accordance with this subsection. In any case in which an employee
27 brings an action against a party other than an employer who failed to
28 comply with the requirements of subsection (b) of section 31-284, in
29 accordance with the provisions of this section, and the employer is a
30 party defendant in the action, the employer may join as a party
31 plaintiff in the action. The bringing of any action against an employer
32 shall not constitute notice to the employer within the meaning of this
33 section. If the employer and the employee join as parties plaintiff in the
34 action and any damages are recovered, the damages shall be so
35 apportioned that the claim of the employer, as defined in this section,
36 shall take precedence over that of the injured employee in the proceeds
37 of the recovery, after the deduction of reasonable and necessary
38 expenditures, including attorneys' fees, incurred by the employee in
39 effecting the recovery. If the action has been brought by the employee,
40 the claim of the employer shall be reduced by one-third of the amount
41 of the benefits to be reimbursed to the employer, unless otherwise
42 agreed upon by the parties, which reduction shall inure solely to the
43 benefit of the employee, except that such reduction shall not apply if
44 the reimbursement is to the state of Connecticut or a political
45 subdivision of the state including a local public agency, as the
46 employer, or the custodian of the Second Injury Fund. The rendition of
47 a judgment in favor of the employee or the employer against the party
48 shall not terminate the employer's obligation to make further
49 compensation which the commissioner thereafter deems payable to the
50 injured employee. If the damages, after deducting the employee's

51 expenses as provided in this subsection, are more than sufficient to
52 reimburse the employer, damages shall be assessed in his favor in a
53 sum sufficient to reimburse him for his claim, and the excess shall be
54 assessed in favor of the injured employee. No compromise with the
55 person by either the employer or the employee shall be binding upon
56 or affect the rights of the other, unless assented to by him. For the
57 purposes of this section, the claim of the employer shall consist of (1)
58 the amount of any compensation which he has paid on account of the
59 injury which is the subject of the suit and (2) an amount equal to the
60 present worth of any probable future payments which he has by award
61 become obligated to pay on account of the injury. The word
62 "compensation", as used in this section, shall be construed to include
63 incapacity payments to an injured employee, payments to the
64 dependents of a deceased employee, sums paid out for surgical,
65 medical and hospital services to an injured employee, the burial fee
66 provided by subdivision (1) of subsection (a) of section 31-306,
67 payments made under the provisions of sections 31-312 and 31-313,
68 and payments made under the provisions of section 31-284b in the case
69 of an action brought under this section by the employer or an action
70 brought under this section by the employee in which the employee has
71 alleged and been awarded such payments as damages. Each employee
72 who brings an action against a party in accordance with the provisions
73 of this subsection shall include in his complaint (A) the amount of any
74 compensation paid by the employer or the Second Injury Fund on
75 account of the injury which is the subject of the suit and (B) the amount
76 equal to the present worth of any probable future payments which the
77 employer or the Second Injury Fund has, by award, become obligated
78 to pay on account of the injury. Notwithstanding the provisions of this
79 subsection, when any injury for which compensation is payable under
80 the provisions of this chapter has been sustained under circumstances
81 creating in a person other than an employer who has complied with
82 the requirements of subsection (b) of section 31-284, a legal liability to
83 pay damages for the injury and the injured employee has received
84 compensation for the injury from such employer, its workers'
85 compensation insurance carrier or the Second Injury Fund pursuant to

86 the provisions of this chapter, the employer, insurance carrier or
87 Second Injury Fund shall have a lien upon any judgment received by
88 the employee against the party or any settlement received by the
89 employee from the party, provided the employer, insurance carrier or
90 Second Injury Fund shall give written notice of the lien to the party
91 prior to such judgment or settlement.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2011</i>	31-293(a)

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill exempts the state and municipalities and is not anticipated to result in a fiscal impact as it does not alter the state or municipalities' ability to recover damages from third parties.

House "A" adds the provision that a right of action does not abate if the employer, insurer, or custodian fails to join the lawsuit but gives written notice of a lien and results in no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**HB 6474 (as amended by House "A")******AN ACT CONCERNING THE RESOLUTION OF LIENS IN WORKERS' COMPENSATION CASES.*****SUMMARY:**

By law, an injured employee eligible for workers' compensation benefits can sue someone who is liable for damages for the injury, except for an employer who complies with the workers' compensation law or another employee. An employer who has paid or is obligated to pay workers' compensation benefits to the employee can also sue or join an employee's lawsuit in order to be reimbursed for benefits paid. An employer, its insurance carrier, or the Second Injury Fund paying benefits to an injured employee has a lien on any judgment or settlement the employee receives if they provide notice of the lien before judgment or settlement.

By law, if the employer and employee are both plaintiffs and recover damages, these are apportioned so that the employer's claim takes precedence, after deductions for reasonable and necessary expenses, including attorneys' fees incurred by the employee. Under this bill, if the employee brings the action, the employer's claim is reduced by one-third of the amount to be reimbursed to the employer unless the parties agree otherwise. The reduction is solely for the employee's benefit. But the reduction does not apply if reimbursement is to the (1) state or a political subdivision, including a local public agency, as the employer or (2) Second Injury Fund custodian.

By law, if the employee, employer, or Second Injury Fund custodian brings the lawsuit, he or she must immediately notify the others in writing and the others can join the suit. Under current law, if the

others do not join the suit within 30 days, their right of action against the party in question abates. This bill provides that the right of action does not abate if the employer, insurer, or custodian fails to join the lawsuit but gives written notice of a lien.

*House Amendment "A" adds the provision that a right of action does not abate if the employer, insurer, or custodian fails to join the lawsuit but gives written notice of a lien.

EFFECTIVE DATE: July 1, 2011

BACKGROUND

Second Injury Fund

This fund provides workers' compensation insurance coverage to workers whose employers failed to provide it. By law, the fund's custodian can also sue or join an employee's lawsuit.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 24 Nay 8 (03/11/2011)